

**DISCUSSION OF AMENDMENTS TO BILL 101 - THE CHARTER OF THE
FRENCH LANGUAGE - IN AREAS DEALING WITH THE QUESTION OF**



Public signs

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A time for change

A limited and controlled process has been undertaken to examine changes to Quebec's language laws.

The Minister Responsible for the Charter of the French Language has requested that the Conseil de la langue française (an advisory and research body set up under Bill 101) present opinions on changes to five major areas of Bill 101. They are as follows:

- 1) "public signs, commercial advertising and signs relating to firm names"
- 2) "admission to English schools at the kindergarten, primary and secondary level"
- 3) "recognition accorded by article 113(f) of the Charter"
- 4) "traffic signs... where the use of a language other than French may be required for reasons of public security or health"
- 5) "French in firms which do not have to obtain a francization certificate"

In each of these areas, there are widely disparate views held on the nature and necessity of change. What we at Alliance Quebec seek is a full, frank and constructive discussion and evaluation of all the facts in each area under discussion. We want to take into account the hopes and fears of all residents of Quebec.

The government has recognized that there are problems with this legislation. The solutions can only really be found and achieved through consensus.

As a starting point for reaching that consensus, we must begin by agreeing that these areas ought to be examined and that changes to this law are not inconceivable.

Introduction to public signs

Few issues have aroused as much passionate discussion in our history as the question of public signs in Quebec. In many ways this debate has taken on a significance well beyond its physical actuality. To the English-speaking community and increasingly to all Quebecers, it is seen as an overzealous legislative restriction that does nothing to promote the most positive aspects of our society.

Quebec's sign law not only contradicts Canadian perceptions of what is right, but Quebec's own ideas of what this society must aspire to achieve.

There are simple and straightforward solutions to this question. Many were put forward before the implementation of Bill 178, and many still hold true today. Quebecers must debate these questions and come to a conclusion that resolves this question. We need a positive affirmation of both minority and majority communities in Quebec - one that suggests a more understanding and cooperative future together here.

Traffic signs: Other provisions in Bill 101 require traffic signs dealing with public health and security to be in French only. This is a straightforward matter. It will not be dealt with in depth here, except to say that not to notify residents of health and safety hazards is to put people at risk.

The following is taken from a letter dated December 11, 1992, from Claude Ryan, Minister responsible for the Charter of the French language, to Mr. Pierre-Etienne Laporte, President, Conseil de la langue française. The Conseil has been asked to reply by March 31, 1993:

Given the objectives of the Charter, the principles of equality and freedom which must govern the functioning of a democratic society, and the particular situation of Québec with regards to language, is it desirable to bring changes to articles of the Charter which deal with public signs, commercial advertising and signs relating to firm names?

What the law means

The original provisions of Bill 101 (The Charter of the French language) prohibiting the use of any language but French on public signs were declared unconstitutional by the Supreme Court of Canada in 1988. Bill 178, an amendment to Bill 101, was introduced in the National Assembly four days later. It was passed before the week was out by using opting-out clauses in both the Canadian and the Quebec Charters of Rights and Freedoms.

Therefore, this sign legislation violates not only the Canadian Charter of Rights and Freedoms, but **also the Quebec Charter of Human Rights and Freedoms.**

To pass this law (178), the government invoked the "notwithstanding clause" of the Canadian Charter of Rights and Freedoms. It has a five-year "sunset clause" which means the legislation becomes inoperative and of no effect on December 21, 1993.

Under this law, public signs, posters and commercial advertising must only be in French in Quebec.

They may be in French *and in another language* inside certain establishments, provided that the signs are only intended for the public *inside* the establishment and that the French text is *markedly predominant*.

These establishments allowed to have these internal signs must have less than 50 employees. They must **not** be a franchise, a chain of businesses, stores or restaurants, a commercial access ways, inside a shopping centre, or a public means of transportation.

This is further complicated by the fact that exceptions **may** be made at the discretion of the *Office de la langue française*, for "cultural activities of a certain ethnic group", or "commercial establishments specializing in foreign national specialties", for example.

This is a complicated piece of legislation.

Dispelling the arguments for the sign law

The Supreme Court decision in the *La Chaussure Brown's* case, the Quebec Court of Appeal decision (1986) and the Quebec Superior Court decision (1984) all dealt with the same question of whether or not posters, signs or commercial advertising could be posted in French and another language without eliminating the requirement that French be on the sign.

The judgments in each of these courts suggested simple answers that recognized both the needs of the francophone majority and French language in Quebec and the concerns of individuals and minority language communities.

Chief amongst the English-speaking community's on-going concerns is the very real suggestion that where a community is not permitted by law to *appear* to exist, threats to its survival can also go unnoticed.

There are really only three main arguments for the continued disallowance of any language along with French on public signs. They are:

ARGUMENT 1 - *"If other languages are permitted, the French language will be threatened/ marginalized such that no one will learn French."*

ANSWER - This was argued in the courts and it was found there was no evidence to justify this assertion. The English-speaking community and immigrants in Quebec are communities with a high rate of French fluency. This rate of fluency is ever increasing. The reality of life in Quebec is that French is the predominant language. It is specious to suggest that having French only on signs upholds or promotes this reality in any way.

ARGUMENT 2 - *"Having only the French language on signs is fundamental to ensuring that immigrants to Quebec understand that Quebec is predominantly a French society, and integrate into the French-speaking community."*

ANSWER - This line of reasoning suggests that immigrants are simple-

minded. Immigrants recognize, as anyone in Quebec does, the reality of the French language in Quebec.

Conversely, it can effectively be argued that not allowing any languages other than French on public signs does send a message to immigrants, and it is not the type of message of tolerance and understanding that immigrants seek when looking for a new home.

ARGUMENT 3 - *"Maintaining French only on signs is part of the reality of Quebec in which French is the official language that helps maintain the French fact in North America."*

ANSWER - This notion defies reality. The French language has made important gains both in Quebec and in Canada in recent years. Even the most ardent nationalists will admit this. What this sign legislation does in reality is repress a legitimate and intrinsic part of Quebec society in a manner that is not effective in promoting the ideas and concerns of the majority community in Quebec.

The arguments for change

The Minister Responsible for the Charter of the French language has suggested that he would like a "judgment-proof" solution to the question of public signs in Quebec. This type of solution means one which will not be invalidated by the courts and will not require the use of the notwithstanding clause.

The judgment rendered in 1988 on this case went further than any previous decision and offered an actual solution to the question. That judgment has consistently been referred to and relied on every year in subsequent Charter cases across Canada. The only truly "judgment-proof" solution to this matter is that which has been put forward by the Court.

The Supreme Court, the Court of Appeal and the Quebec Superior Court all found that the sign law provisions violated the **Quebec Charter of Human Rights and Freedoms**.

In the Supreme Court decision it was pointed out that the legislation was contrary to fundamental rights, and that the requirement of French only on signs did not constitute a "reasonable limit" to basic rights guaranteed to all Quebecers. It was argued by the government of Quebec that the purpose was to maintain the "*visage linguistique*" of Quebec. All three courts found that the "*visage linguistique*" of Quebec must reflect the actual diversity of the province.

The court offered a solution based on the purpose and goals of Quebec law. **The solution was that French be required on signs in Quebec.** This solution makes the French language the only language with a legal safeguard and guarantee on the "*visage linguistique*" of Quebec.

This does not mean that English would be required; no language other than French would be required on signs in Quebec. Other languages would however be permitted.

Furthermore, the Supreme Court stated that "commercial expression" is recognized as having protection as a fundamental right, which includes the right of the receiver, or listener, as well as the sender, of any message, including commercial ones. Therefore, any restrictions on the size, type, or incorporated nature of the establishment that is permitted expression guaranteed in the *Charter* are likely to be found invalid by the courts.

The judgment rendered by the Supreme Court is the only recognized and legally appropriate response to avoid use of the notwithstanding clause.

Finally, it should be recognized that Bill 178 does not contribute to the image of Quebec as an open and tolerant society. Not to the English-speaking community in Quebec. Not to Canadians. Not to immigrants, nor to the world. Indeed, not to the majority of Quebecers. Nor does Bill 178 truly help protect the French language.

There are more effective, efficient, durable and fundamentally fair ways of protecting the French language.

The Charter of the French Language (Bill 101)

Sections dealing with public signs

22. The civil administration shall use only French in signs and posters, except where reasons of public health or safety require the use of another language as well.
29. Only the official language shall be used on traffic signs. The French inscription may be complemented or replaced by symbols or pictographs.

- 58.* Public signs and posters and commercial advertising, outside or intended for the public outside, shall be solely in French.

Similarly, public signs and posters and commercial advertising shall be solely in French.

1. inside commercial centres and their access ways, except inside the establishments of business firms contemplated in section 136;
2. inside any public means of transport and its access ways;
3. inside the establishments of business firms contemplated in section 136;
4. inside the establishments of business firms employing fewer than fifty but more than five persons, where such firms share, with two or more other business firms, the use of a trademark, a firm name or an appellation by which they are known to the public.

The Government may, however, by regulation, prescribe the terms and conditions according to which public signs and posters and public advertising may be both in French and in another language, under the conditions set forth in the second paragraph of section 58.1, inside the establishments of business firms contemplated in subparagraphs 3 and 4 of the second paragraph.

The Government may, in such regulation, establish categories of business firms, prescribe terms and conditions which vary according to the category and reinforce the conditions set forth in the second paragraph of section 58.1.

- 58.1.* Inside establishments, public signs and posters and commercial advertising shall be in French.

They may also be both in French and in another language, provided they are intended only for the public inside the establishments and that French is markedly predominant.

- 58.2.* Public signs and posters and commercial advertising may be both in French and in another language or solely in another language in the cases and under the conditions or circumstances prescribed by regulation of the Office de la langue française.
- 59.* Sections 58 to 58.2 do not apply to advertising carried in news media that publish in a language other than French, or to messages of a religious, political, ideological or humanitarian nature if not for a profit motive.
- 60.* (Repealed)
- 61.* Public signs and posters, outside, respecting the cultural activities of a particular ethnic group in any way may be in both French and the language of that ethnic group.
- 62.* Outside but on the premises of commercial establishments specializing in foreign national specialties or the specialties of a particular ethnic group, public signs and posters may be both in French and in the relevant foreign national language or the language of that ethnic group.
- The first paragraph does not apply to establishments specializing in the sale of products used or consumed in Québec as commonly as products that are not foreign specialties or the specialties of a particular ethnic group.
63. Firms names must be in French.
64. To obtain juridical personality, it is necessary to have a firm name in French.
65. Every firm name that is not in French must be changed before 31 December 1980, unless the act under which the firm is incorporated does not allow it.
66. Sections 63, 64, and 65 also apply to firm names registered under the Companies and Partnerships Declaration Act (chapter D-1).
67. Family names, place names, expressions formed by the artificial combinations of letters, syllables or figures, and expressions taken from other languages may appear in firm names to specify them, in accordance with the other acts and with the regulations of the Office de la langue française.
- 68.* Except as otherwise provided in this section, only the French version of a firm name may be used in Québec.

A firm name may be accompanied with a version in another language for use outside Québec. That version may be used together with the French version of the firm name in the inscriptions referred to in section 51, if the products in question are offered both in and outside Québec.

In printed documents, and in the documents contemplated in section 57 if they are both in French and in another language, a version of the French firm name in another language may be used in conjunction with the French firm name.

When texts or documents are drawn up in a language other than French, the firm name may appear in the other language without its French version.

On public signs and posters and in commercial advertising

- (1) a firm name may be accompanied with a version in another language, if they are both in French and in another language.
- (2) a firm name may appear solely in its version in another language, if they are solely in a language other than French.

69.* (Repealed)

70. Health services and social services the firm names of which, adopted before 26 August 1977, are in a language other than French may continue to use such names provided they add a French version.
71. A non-profit organization devoted exclusively to the cultural development or to the defense of the peculiar interests of a particular ethnic group may adopt a firm name in the language of the group, provided that it adds a French version.
136. Business firms employing fifty or more employees must, from the date determined under section 152, hold francization certificates issued by the office.

*(N.B. an * denotes sections amended by Bill 178 in 1988)*

DEFINITIONS

According to the regulations that accompany this section of the law, signs, and posters are defined as "any message of public interest intended for the public and displayed in a public place or public view" and commercial advertising is "any commercial message intended for the public and displayed in a public place or in public view; or any other commercial message intended for the public, to promote a good or a service." A public place is defined as "any place to which the public has access."

The Canadian Charter of Rights and Freedoms

Excerpts

Fundamental Freedoms

2. Everyone has the following fundamental freedoms:
 (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

Equality Rights

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The Notwithstanding Clause

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

10.

**The derogation provision found in
 National Assembly Bill 178 (1988, chapter 54)
 An Act to amend the Charter of the French Language :**

The Québec Charter of Human Rights and Freedoms

Excerpts

Fundamental freedoms and rights

3. Every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association.

Right to equal recognition and exercise of rights and freedoms

10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.
- Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

Derogation (notwithstanding) clause

52. No provision of any Act, even subsequent to the Charter, may derogate from sections 1 to 38, except so far as provided by those sections, unless such Act expressly states that it applies despite the Charter.

The provisions of section 58 and those of the first paragraph of section 68, enacted by sections 1 and 6, respectively, of this Act, shall operate notwithstanding the provisions of paragraph b of section 2 or section 15 of the Constitution Act, 1992 (Schedule B to the Canada Act, chapter 11 in the 1992 volume of the Acts of the Parliament of the United Kingdom) and apply despite sections 3 and 10 of the Charter of Human Rights and Freedoms (R.S.Q., chapter C-12).

Supreme Court of Canada

Excerpts from **Judgment in La Chaussure Brown's Case**
rendered December 15, 1988

Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice. Language is not merely a means or medium of expression; it colours the content and meaning of expression. (p.37)

Given the earlier pronouncements of this Court to the effect that the rights and freedoms guaranteed in the Canadian Charter should be given a large and liberal interpretation, there is no sound basis on which commercial expression can be excluded from the protection of s. 2(b) of the Charter. It is worth noting that the courts below applied a similar generous and broad interpretation to include commercial expression within the protection of freedom of expression contained in s.3 of the Charter. Over and above its intrinsic value as expression, commercial expression which, as has been pointed out, protects listeners as well as speakers plays a significant role in enabling individuals to make informed economic choices, an important self-fulfillment and personal autonomy. The Court accordingly rejects the view that commercial expression serves no individual or societal value in a free and democratic society and for this reason is undeserving of any constitutional protection. (pp.58-9)

Since the evidence put to us by the government showed that the predominance of the French language was not reflected in the "visage linguistique" of Quebec, the governmental response could well have been tailored to meet that specific problem and to impair freedom of expression minimally. (p.74)

French could be required in addition to any other language or it could be required to have greater visibility than that accorded to other languages. Such measures would ensure that the "visage linguistique" reflected the demography of Quebec: the predominant language is French. This reality should be communicated to all citizens and non-citizens alike, irrespective of their mother tongue. But exclusivity for the French language has not survived the scrutiny of a proportionality test and does not reflect the reality of Quebec society. (pp.74-5)

Francophones are permitted to use their language of use while anglophones and other non-francophones are prohibited from doing so. Does this differential effect constitute a distinction based on language within the meaning of s.10 of the Quebec Charter? In this Court's opinion it does. (pp.82-3)

POSTSCRIPT:

This is the fourth and final booklet in a series of information booklets produced by Alliance Quebec on the issues under consideration for possible change under Bill 101, The Charter of the French language.

The other books are:

"Access to English schooling in Quebec"

"113(f) Status: Institutions and language in Quebec"

"Francization of the workplace"

Each of these booklets is available through your local chapter of Alliance Quebec or by contacting the provincial office listed on the back.

C'est en fonction de son objectif premier, qui doit demeurer inchangé, et à partir de la réalité d'aujourd'hui que toute l'économie de la loi 101 doit faire l'objet d'une réexamination en profondeur. Et surtout pas d'un bricolage électoral dangereux.

Pierre Gravel
La Presse
18 février 1993

En matière de langue d'affichage, nous proposons donc, comme nous l'avons toujours maintenu, que l'affichage bilingue, tant à l'intérieur qu'à l'extérieur des commerces, soit permis au Québec, le français étant prédominant.

Conseil du Patronat
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